

# PART B: GENERAL INSTRUCTIONS AND CONTRACT TERMS AND CONDITIONS

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## B.1 INTRODUCTION

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### B.1.1 Definitions

The definitions used in Part A of this RFP apply to this Part B as well. Unless the context clearly indicates otherwise, all terms and conditions of this Contract that refer to “Respondent” apply with equal force to Contractor.

### B.1.2 Conflicts of Interest

#### B.1.2.1 Actual and Perceived Conflicts

By submitting a Proposal, Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with [AGENCY]. Respondent also represents and warrants that entering a Contract with [AGENCY] will not create the appearance of impropriety. In its Proposal, Respondent must disclose any existing or potential conflict of interest that it might have in contracting with [AGENCY]. The requirement to disclose any actual or potential conflict of interest will continue during the term of the contract, and will survive until the end of the recordkeeping requirement in B.7.4. The [AGENCY] will decide, in its sole discretion, whether an actual or perceived conflict should result in Proposal disqualification or Contract termination.

#### B.1.2.2 Current and Former [AGENCY] Employees

In addition to the disclosures required above, Respondent must also disclose any of its personnel who are current or former officers or employees of the [AGENCY] or who are related, within the third degree by consanguinity (as defined by Texas Government Code § 573.023) or within the second degree by affinity (as defined by Texas Government Code § 573.025), to any current or former officers or employees of the [AGENCY].

Respondents must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Texas Government Code Chapters 572 and 573). Such “revolving door” provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees’ official

responsibility. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

Respondent must identify each employee who works for more than one staffing company at any facility and ensure that the employee's cumulative weekly hours worked at all state facilities through any one staffing company does not exceed 40 hours per week.

See also B.7.8.6, Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code § 572.069.

### **B.1.3 Construction of this RFP and the Contract**

#### **B.1.3.1 Global Drafting Conventions**

The terms "include," "includes," and "including" are terms of inclusion and enlargement. When used in this Contract these terms should be read as if followed by the phrase "without limitation."

Unless explicitly stated otherwise, any references to "Sections," "Articles," "Exhibits," or "Attachments" are deemed to be references to the Sections, Articles, Exhibits, and Attachments to this RFP and the Contract.

#### **B.1.3.2 Headings**

The Article and Section headings in this RFP and the Contract are for reference and convenience only and may not be considered in the interpretation of this RFP or the Contract.

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## **B.2 THE RFP PROCESS**

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### **B.2.1 Submitting Questions about the RFP**

Respondent will have until the Deadline for Submitting Questions, identified in Part A, to submit in writing all questions regarding this RFP. Respondent may only send questions to the Point of Contact. All questions must precisely and specifically cite the RFP section to which the question refers. [AGENCY] will, at its discretion, answer the questions in a Question and Answer Document posted on the ESBD.

Only answers that [AGENCY] provides in writing are official. Information in any form other than the materials constituting this RFP, the Question and Answer Document, and any RFP addendum is not binding on [AGENCY].

All questions submitted to [AGENCY] must include the identity of the sender, the sender's title, company name, mailing address, telephone number, and facsimile number or e-mail address, as applicable.

Minor questions for which the answer will not affect the interpretation of the RFP or change the contents of a Proposal (for example, a question regarding delivery of the sealed Proposal) may be answered orally or by e-mail by [AGENCY].

### **B.2.2 Addenda to the RFP**

Should an addition or correction to this RFP become necessary, [AGENCY] will post an addendum relating the necessary information on the ESBD. Respondent is responsible for periodically checking the ESBD for addenda or additional information relating to this RFP. Respondent is required to acknowledge each addendum by returning a signed copy of the addendum with its Proposal.

### **B.2.3 Testing and Inspection**

[AGENCY] may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. [AGENCY] may also test and inspect goods and services before they are purchased under the Contract.

Authorized [AGENCY] personnel must have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the [AGENCY] inspections will not disrupt the Respondent's daily operations. [AGENCY] will test samples submitted with the Proposal or samples taken from regular shipments. Respondent will bear all costs of testing and inspection. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, [AGENCY] will reject the goods in whole or in part, at [AGENCY's] option. [AGENCY] will return the goods to Respondent or hold them for disposition at Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

If material fails to meet specifications, the Respondent will be notified by fax, mail, or e-mail. Respondent will have ten working days after receipt of the notification to remove the rejected material from state property at the Respondent's expense. [AGENCY] will dispose of the material Respondent does not remove in the allotted time period and will charge Respondent for all disposal expenses.

### **B.2.4 Accuracy of the Proposal**

Respondent's Proposal must be true and correct and must contain no cause for claim of omission or error. Proposals may be withdrawn in writing at any time prior to the submittal deadline.

### **B.2.5 HUB Subcontracting Plan Requirements**

It is the policy of [AGENCY] to promote and encourage contracting and subcontracting opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with Texas Government Code Chapter 2161. Eligible Respondents are encouraged to become HUB certified. Respondents may find State of Texas HUB applications at:

<http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.

Definitions for State of Texas HUB certifiable businesses can be found in 34 Texas Administrative Code Chapter 20, Subchapter B, which is available at:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y)

A HUB Subcontracting Plan Form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, [AGENCY] will reject the Proposal as a material failure to comply with advertised specifications.

[AGENCY] identified probable subcontracting opportunities in Part A. This list should not be considered a mandatory or an exhaustive list. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HUB Subcontracting Plan for further instructions that require vendors to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at: <http://www2.cpa.state.tx.us/cmb1/hubonly.html>.

Additional minority and women owned business association resources are available for subcontracting notices at: <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

Respondent can find additional information and training regarding how to complete a HUB Subcontracting Plan on the CPA Website at the following link: <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.

### **B.2.6 Cost of Submitting the Proposal**

[AGENCY] will not reimburse the Respondent for any cost related to its Proposal. Respondent is responsible for any expense related to the preparation and submission of its Proposal.

### **B.2.7 Public Information Act Disclosures**

[AGENCY] is a governmental body subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552. The Proposal and other information submitted to the [AGENCY] by the Respondent are subject to release as public information by the [AGENCY]. The Proposal and other submitted information is presumed subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and will make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by the Respondent as proprietary or confidential will be deemed subject to disclosure pursuant to the PIA. Respondent will irrevocably be deemed to have waived, and Respondent agrees to fully indemnify the State of Texas, [AGENCY] any claim of infringement by [AGENCY] regarding the intellectual property rights of Respondent or any third party for any materials appearing in the Proposal.

Contractor is required to make any information created or exchanged with a state governmental entity (as defined by Texas Government Code § 2252.907(d)) pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas, [AGENCY], : portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

If Respondent's Proposal contains any information, which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver to [AGENCY] four CDs containing the following information:

1. Two CDs containing complete copies of all of Respondent's submissions pursuant to this RFP. Respondent must mark these "Complete Proposal Documents, [Respondent's Name], [AGENCY] RFP [RFP Number]. CONTAINS CONFIDENTIAL INFORMATION."
2. Two CDs, each containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out, or otherwise redacted. Each of these CDs must also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. Respondent must mark these CDs "For Public Release: Redacted Version of [Respondent's Name], [AGENCY] RFP [RFP Number]."

### **B.2.8 Agency Posting of Contracts**

Without prior written notice to Respondent, the redacted Proposal submitted under Subsection 2 of Section B.2.7, Public Information Act Disclosures, may be posted on [AGENCY]'s website as part of the Contract per Texas Government Code § 2261.253(a).

### **B.2.9 Irrevocability of the Proposal**

The Proposal is irrevocable for 120 calendar days following the Proposal Opening Date and Time identified in Part A. [AGENCY] may extend this period with Respondent's written agreement.

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## **B.3 CONTRACT INFORMATION**

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### **B.3.1 Amending the Contract**

All alterations, additions, or deletions of the Contract must be in writing and mutually agreed upon by both Parties and put into effect with a Contract Amendment issued by the [AGENCY]. Respondent will not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

### **B.3.2 Order of Precedence**

In the event of any conflict or contradiction between or among these documents, the Notice of Award, as modified by any Contract Amendments, controls over the RFP and the Proposal. The RFP, as modified by any Addenda, controls over the Proposal.

### **B.3.3 Terminating the Contract**

#### **B.3.3.1 Convenience of the State of Texas**

[AGENCY] reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if [AGENCY] determines that such termination is in the best interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. [AGENCY] will be liable for payments for any goods or services ordered from Contractor before the termination date.

#### **B.3.3.2 Cause/Default**

If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, [AGENCY] may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

[AGENCY] may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless [AGENCY] notifies Contractor in writing prior to the exercise of such remedy. Contractor will remain liable for all covenants and indemnities under the Contract. Contractor will be liable for all costs and expenses, including court costs, incurred by [AGENCY] with respect to the enforcement of any of the remedies listed in this Contract.

#### **B.3.3.3 Change in Federal or State Requirements**

If federal or state laws, regulations, or requirements are amended or judicially interpreted so that either [AGENCY] or Respondent cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties will be discharged from any further obligations under the Contract.

#### **B.3.3.4 TCPDP Purchasing Preference**

Pursuant to Texas Human Resources Code Chapter 122, state agencies must purchase products and services meeting the agency's specifications offered by a Community Rehabilitation Program (CRP) certified by the Texas Council on Purchasing from People with Disabilities (TCPDP), or its Central Nonprofit Agency, Texas Industries for the Blind and Handicapped (TIBH). Should any item(s) awarded under any contract pursuant to this RFP become available from a CRP through TIBH or TCPDP during the term of the contract, the state may cease all use of the awarded contract immediately upon the availability of such product or service, and may terminate the contract for some or all of such products or services awarded.

#### **B.3.3.5 Rights upon Termination or Expiration of Contract**

In the event that the Contract is terminated for any reason, or upon its expiration, the [AGENCY] retains ownership of all associated work products and documentation obtained from Contractor under the Contract.

#### **B.3.3.6 Survival of Terms**

Termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

### **B.3.4 Contract Documentation**

The Contract will consist of the Notice of Award, Listing of Awarded Items, and any Contract Amendments to these documents issued by [AGENCY]; this RFP, together with any modifications



made through Addenda; and the successful Proposal, together with any clarifications that are submitted at the request of [AGENCY].

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## **B.4 CONTRACT MANAGEMENT**

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### **B.4.1 Contract Managers**

#### **B.4.1.1 The [AGENCY] Contract Manager**

The [AGENCY] Contract Manager has the authority to:

- sign Controlled Correspondence;
- serve as the day-to-day point-of-contact;
- coordinate quality control reviews;
- approve invoices;
- coordinate meetings with Respondent;
- investigate complaints;
- receive requests for substitutions or changes in goods or services awarded under the Contract;
- initiate contract amendments; and
- discuss pricing changes.

#### **B.4.1.2 The Respondent's Contract Manager**

Respondent must identify its Contract Manager to [AGENCY] in writing within 10 days of the issuance of the Purchase Order. Respondent should document all subsequent changes of Respondents Contract Manager through Controlled Correspondence. Respondent's Contract Manager must be someone with the authority to:

- make decisions regarding the deliverables required by the Contract;
- sign Controlled Correspondence;
- serve as the day-to-day point-of-contact;
- coordinate quality control reviews;
- coordinate meetings with the [AGENCY]; and
- investigate complaints.

### **B.4.2 Controlled Correspondence**

In order to track and document requests for decisions or information pertaining to the Contract, and the subsequent response to those requests, [AGENCY] and Respondent will use Controlled Correspondence as discussed throughout this Contract. [AGENCY] will manage the Controlled Correspondence for the Contract. For each Controlled Correspondence document, [AGENCY] will assign a tracking number and the appropriate Party's Contract Manager will sign the document.

Controlled Correspondence cannot be used to change pricing or alter the terms of the Contract. Controlled Correspondence cannot be the basis of a claim for equitable adjustment of pricing. Any changes that involve the pricing or the terms of the Contract must be by a properly executed Contract amendment. However, the Controlled Correspondence process may be used to document refinements and interpretations of the provisions of the Contract, to document the cost impacts of proposed changes, and to document [AGENCY]-approved changes to Respondent's HUB subcontracting plan.

Both Parties will maintain Controlled Correspondence documents in ongoing logs as part of the normal status reporting process. Any communication not generated in accordance with this process is not binding upon the Parties and is of no effect.

**B.4.3 Notices and Liaisons**

**B.4.3.1 Delivery of Written Notices**

Both Parties must deliver any required notice in writing to the other Party and to the addresses specified in this Section or the Respondent Information Form. The Parties deem the notice to have been given immediately if delivered in person to the receiving Party’s address. The Parties deem notice to have been given on the date of certified receipt, if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving Party at its specified address.

**B.4.3.2 Notice to Respondent**

Within 10 days of the issuance of the Notice of Award, Respondent must send [AGENCY] written notice of the address and contact person for legal notice and Controlled Correspondence purposes. If there is any change to this information during the term of the contract, Respondent must notify [AGENCY] by Controlled Correspondence.

**B.4.3.3 Notice to [AGENCY]**

[AGENCY]’s address for all purposes under this Contract other than Controlled Correspondence is as follows.

Mailing Address	Physical Address
[Agency Address]	[Agency Address]

With copies to (registered or certified mail with return receipt is not required for copies):

Mailing Address	Physical Address
[Agency Address]	[Agency Address]

**B.4.4 Subcontracting Approval**

Respondent must perform the Contract with its own resources and those subcontractors identified in Respondent’s HUB Subcontracting Plan. In the event that Respondent determines that it is necessary or expedient to execute additional or alternative subcontracts for any of the performances under the Contract, Respondent must submit a revised HUB Subcontracting Plan for prior approval before executing any subcontracts. Respondent must also transmit to the [AGENCY] for review and prior [AGENCY] approval a true copy of the subcontract it proposes to execute with a subcontractor.

Respondent, in subcontracting for any performances specified in the RFP or resulting Contract, expressly understands and acknowledges that in entering into such subcontract(s), [AGENCY] is in no manner liable to any subcontractor(s) of the Respondent. In no event will this provision relieve Respondent of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this RFP and Contract. Respondent must manage all quality

and performance, project management, and schedules for subcontractors. Respondent is solely responsible and accountable for the completion of all work for which Respondent has subcontracted.

#### **B.4.5 No Implied Authority**

Any authority delegated to the Respondent by [AGENCY] is limited to the terms of the Contract. Respondent may not rely upon implied authority and specifically is not delegated authority under the Contract to: (1) make public policy; (2) promulgate, amend, or disregard [AGENCY] program policy; or (3) unilaterally communicate or negotiate, on behalf of the [AGENCY], with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency.

#### **B.4.6 Cooperation with the [AGENCY]**

Respondent must ensure that it cooperates with [AGENCY] and other state or federal administrative agencies, at no charge to the [AGENCY], for purposes relating to the administration of the Contract. Respondent agrees to reasonably cooperate with and work with the [AGENCY]'s contractors, subcontractors, and third party representatives as requested by the [AGENCY].

#### **B.4.7 Dispute Resolution**

**B.4.7.1 Informal Meetings.** [AGENCY] and Contractor will meet as needed to implement the terms of this Contract and will make a good faith attempt to resolve any disputes informally.

**B.4.7.2 Alternative Dispute Resolution at State Office of Administrative Hearings.** If the Parties' attempts to resolve their disagreements informally fail, the parties may agree, but are not required, to utilize the non-binding alternative dispute resolution services of the State Office of Administrative Hearings (SOAH) to attempt to resolve their disagreements, claims, or disputes under this Contract. Contractor will pay all costs of the mediation unless [AGENCY], in its sole good faith discretion, approves its payment of all or part of such costs. [AGENCY] or Contractor's participation in, or the results of, any mediation under this subsection or the provisions of this Section will not be construed as a waiver by [AGENCY] or Contractor of any rights, privileges, defenses, remedies, or immunities available to the parties under this Contract or available to [AGENCY] as an agency of the State of Texas.

**B.4.7.3 Texas Government Code Chapter 2260.** The Parties must use the dispute resolution process provided for in Texas Government Code Chapter 2260, as further described in this Section, to attempt to resolve any claim for breach of this Contract made by Contractor.

Contractor's must submit claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business according to the negotiation process provided in Texas Government Code Chapter 2260, Subchapter B. To initiate the process, Contractor must submit written notice, as required by subchapter B, to [AGENCY]'s [Executive Director] and to [AGENCY] as stated in Section B.4.3. This written notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. Compliance by Company with subchapter B is a condition precedent to the filing of a contested case proceeding under Texas Government Code Chapter 2260, Subchapter C.

The contested case process provided in Texas Government Code Chapter 2260, Subchapter C is Contractor's sole and exclusive process for seeking a remedy for any alleged breach of this Contract by

[AGENCY] if the Parties are unable to resolve their disputes informally. Compliance with the contested case process provided in Texas Government Code Chapter 2260, Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Texas Civil Practices and Remedies Code Chapter 107. Neither the execution of this Contract by [AGENCY] nor any other conduct of any [AGENCY] representative relating to this Contract will be considered a waiver of sovereign immunity.

The submission, processing, and resolution of Contractor's claim is governed by CPA's published rules, in 34 Tex. Admin. Code Chapter 1, Subchapter F.

**B.4.7.4 Company's Continued Performance.** Notwithstanding any other provision of this Contract to the contrary, unless otherwise requested or approved in writing by [AGENCY], Contractor must continue performance and will not be excused from performance during the period any breach of contract claim, dispute or mediation is pending under either of the above processes.

However, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code § 2251.051 and such suspension of performance is expressly applicable and authorized under that law.

#### **B.4.7.5 Fraud, Waste, and Abuse**

By submitting a Proposal to the RFP, Respondent represents and warrants that it has read and understood and will comply with [AGENCY]'s Anti-Fraud Policy, found at: <http://www.window.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

#### **B.4.8 Renegotiation of Price**

[AGENCY] will monitor market prices and prices paid by other governmental entities or other states for substantially similar goods and services during the term of the Contract. If [AGENCY] determines that substantially similar goods and services are selling for meaningfully lower prices than the prices established in the Contract, [AGENCY] may initiate price renegotiations with Respondent and amend the Contract to reflect a new, lower price, if agreed to by the Parties.

#### **B.4.9 Name Changes and Organizational Changes**

Respondent must provide [AGENCY] with written notice by Controlled Correspondence of all name changes and organizational changes relating to Respondent including any merger, acquisition, or sale no later than ten business days of such change. Respondent, in its notice, must describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Respondent, Respondent must identify the new personnel and provide résumés to [AGENCY], if résumés were originally required by the RFP. [AGENCY] may request other information about the change and its impact on the Contract and Respondent must supply the requested information within five working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Respondent or successor entity, as applicable, to maintain its status as a party to this Contract.

[AGENCY] may terminate the Contract due to any change to Respondent that materially alters the Respondent's ability to perform under the Contract. [AGENCY] has the sole discretion to determine if termination is appropriate. See also Section B.7.10 (No Assignment by Contractor).

#### **B.4.10 News Releases**

[AGENCY] does not endorse any vendor, commodity, or service. News releases pertaining to this transaction and/or advertisements, publications, declarations and any other pronouncements by the Respondent using any means or media mentioning the State of Texas or the [AGENCY] must be approved in writing by the State of Texas, [AGENCY] as applicable, prior to public dissemination. Respondent may not send out unsolicited electronic mail or facsimile transmissions to [AGENCY] without prior written approval of the [AGENCY] Contract Manager, regardless of whether the proposed communication specifically references the awarded contract.

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### **B.5 FINANCIAL INFORMATION**

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#### **B.5.1 Appropriations**

All obligations of [AGENCY] are subject to the availability of legislative appropriations and, for expending federal funds, to the availability of the federal funds applicable to the Contract. Respondent acknowledges that the ability of [AGENCY] to make payments under the Contract is contingent upon the continued availability of funds. Respondent further acknowledges that funds may not be specifically appropriated for the Contract and [AGENCY]'s continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. [AGENCY] will use all reasonable efforts to ensure that such funds are available. Respondent agrees that if future levels of funding for [AGENCY] are not sufficient to continue operations without any operational reductions, the [AGENCY], in its discretion, may terminate the Contract, either in whole or in part, in its discretion, may terminate a pending order under the Contract, either in whole or in part. In the event of such termination, [AGENCY] will not be considered to be in default or breach under the Contract, nor will either be liable for any further payments ordinarily due under the Contract, nor will either be liable for any damages or any other amounts which are caused by or associated with such termination. [AGENCY] will make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or the Contract, if the Contract is being terminated. [AGENCY] will be liable for payments limited only to the portion of work the [AGENCY] authorized in writing and which the Respondent has completed, delivered to the [AGENCY], and which has been accepted by the [AGENCY]. All such work must be completed, per the Contract requirements, prior to the effective date of termination.

#### **B.5.2 Audit Requirements**

Pursuant to Texas Government Code § 2262.154, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Respondent or any other entity or person receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds by Respondent or any other entity or person directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that

is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. The Contract may be amended unilaterally by the [AGENCY] to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Texas Government Code § 2262.154. **Respondent must ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Respondent and the requirement to cooperate is included in any subcontract it awards.**

### **B.5.3 Invoicing and Payment Requirements**

In order to receive payment under the Contract, Contractor must submit an original invoice to the [AGENCY], which will be designated in the purchase order as the "Bill To" address. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments:

- (1) Name and address of the Contractor.
- (2) Contractor's Texas Identification Number (TIN).
- (3) Contractor's invoice remittance address.
- (4) The purchase order or contract number authorizing the delivery of products or services.
- (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of Contractor's information.

If an invoice does not meet this Section's requirements, [AGENCY] will send Contractor written notice with the improper invoice within 21 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice.

For purposes of this Section and Sections B.5.4 and B.5.5, the [AGENCY] will only be receiving and paying invoices when [AGENCY] has placed an order with the Contractor for [AGENCY] needs.

### **B.5.4 Disputed Invoices**

As stated above, Contractor will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the state. If an invoice dispute is resolved in favor of the Contractor, the Contractor is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to Texas Government Code § 2251.021. If a dispute is resolved in favor of [AGENCY], Contractor will submit a corrected invoice that must be paid in accordance with Texas Government Code § 2251.021. The unpaid balance accrues interest if [AGENCY] does not pay the corrected invoice by the appropriate date.

### **B.5.5 Time and Manner of Payment**

Pursuant to Texas Government Code Chapter 2251, Payment by the [AGENCY] is overdue on the 31st day after the later of: (1) the date the [AGENCY] receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the [AGENCY] receives the invoice for the goods or service.

#### **B.5.6 Antitrust and Assignment of Claims**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

Contractor assigns to the State of Texas all of Contractor's rights, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with the Contract.

#### **B.5.7 Debts and Delinquencies**

[AGENCY] is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, [AGENCY] will apply any payments or other amounts Contractor is otherwise owed under this Contract toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

#### **B.5.8 Liability for and Payment of Taxes**

[AGENCY] is exempt from State Sales tax and Federal Excise tax. [AGENCY] will furnish Tax Exemption Certificate(s) to the Respondent upon request. The Respondent must pay all taxes resulting from the RFP and Contract including any federal, state, or local income, sales, excise, franchise, or property taxes. [AGENCY] is not liable to reimburse the Respondent for the payment of taxes incurred by Respondent in acquiring any goods or services as a part of any work called for in this RFP and Respondent's invoice may not include any amount for such taxes, as long as the [AGENCY] has provided the requested Tax Exemption Certificates.

#### **B.5.9 Method of Purchase and Vesting Ownership**

[AGENCY] will purchase all goods or services through this Contract using an outright purchase. Upon installation, acceptance, and payment, [AGENCY] will receive title to any personal property purchased and delivered to it, except as otherwise agreed to in the Contract.

#### **B.5.10 No Debt Against the State**

The Contract does not create any debt by or on behalf of the State of Texas.

### **B.5.11 Refunds**

If [AGENCY] determines that it has overpaid the Contractor under the Contract, Contractor will refund that amount to the [AGENCY], depending on the entity that overpaid. [AGENCY] may offset and deduct the amount of the overpayment from any amount owing, as a reimbursement, but unpaid to the Contractor. Contractor will refund any overpayment within 30 calendar days of receipt of the notice of the overpayment.

If any reimbursement, or a portion of a reimbursement, is disallowed as a result of an audit finding that the Contractor failed to follow the requirements for the Contract, then the Contractor agrees that the [AGENCY] may recoup the disallowed amount from funds payable under the Contract, to the extent the disallowed amount was incurred by the [AGENCY]. If an audit identifies a disallowed amount after the expiration date of the Contract, [AGENCY] will send the Contractor notice of the audit results and specifically identify the amount that must be refunded by the Contractor. Contractor will refund the disallowed amount within 30 calendar days of receipt of the notice.

### **B.5.12 Travel**

Respondent is responsible for any travel or per diem required to perform its obligations under the Contract. All travel and per diem that the state requests in addition to what the Contract requires the Respondent to provide at the Respondent's expense will be paid in accordance with [Texas Government Code, Chapter 660](#).

### **B.5.13 Direct Deposit**

[AGENCY] encourages Contractors to receive payment by electronic means (e.g., direct deposit) as provided by **CPA**.

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## **B.6 CONFIDENTIALITY AND SECURITY**

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Contractor must maintain and protect any information it receives, compiles, or creates as a result of the Contract in accordance with any federal, state, or local laws and regulations that apply. Contractor must establish a method to secure the confidentiality of records and other information relating to the [AGENCY] in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Confidentiality and Security section will survive this Contract and must be included in all subcontracts.

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## **B.7 TERMS AND CONDITIONS**

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### **B.7.1 Affirmations**

Submitting a Proposal with a false statement is a material breach of contract and the Proposal or the Contract will be void. Respondent will be removed from all bid lists. By submission of a signed Proposal, the Respondent certifies the following.

B.7.1.1 Respondent has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or



service to a public servant in connection with the submitted response. Violation of this requirement may result in the termination of the Contract at [AGENCY]'s discretion.

B.7.1.2 Respondent waives any claim against and releases [AGENCY], its officers, employees, agents, and attorneys from liability with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

B.7.1.3 Respondent will promptly notify [AGENCY] in the event that any representations and warranties provided in this Contract are no longer true and correct. Respondent acknowledges that all of its representations and warranties contained in any part of its Proposal and this Contract are material and have been relied upon by the [AGENCY] in selecting the Respondent for the award of the Contract. Further, the Respondent warrants and represents that all of its statements and representations made to the [AGENCY] prior to being awarded the Contract, and those made during the negotiation of this Contract, are material, true and correct.

## **B.7.2 Civil Rights**

The Respondent agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. Respondent will comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

## **B.7.3 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion**

[AGENCY] is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

## **B.7.4 Records Retention**

Respondent must retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. Respondent must retain these

records for a period of seven years after the expiration of the Contract, or until [AGENCY] or the State Auditor's Office (SAO) is satisfied that all audit and litigation matters are resolved, whichever period is longer. Respondent will grant access to all books, records, and documents pertinent to the Contract to [AGENCY], SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

### **B.7.5 Environmental Protection**

Respondent must comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251 *et seq.*).

### **B.7.6 Prohibition on Lobbying**

Respondent must comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. §1601 *et seq.* By submitting a Proposal, Respondent certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. It also certifies that Respondent will disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

### **B.7.7 Copyrights and Publications**

Respondent understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (referred to in this Contract as "the works"), Respondent may copyright the works subject to the reservation by [AGENCY] of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state or political subdivision purposes:

- the copyright in the works developed under the Contract, and
- any rights of copyright to which Respondent purchases ownership with funding from the Contract.

Respondent may publish, at its expense, the results of Contract performance with prior [AGENCY] review and approval of that publication. Any publication (written, visual, or sound) must include acknowledgment of the support received from [AGENCY]. Respondent must provide one copy of any such publication to [AGENCY]. [AGENCY] reserves the right to require additional copies before or after the initial review. Respondent must provide all copies free of charge to [AGENCY].

### **B.7.8 Certifications**

#### **B.7.8.1 Child Support Obligations**

Under Texas Family Code § 231.006, (relating to child support) Respondent, by submitting its Proposal, certifies that it is not ineligible to receive a payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

**B.7.8.2 Franchise Tax Certification**

Respondent, by submitting its Proposal, certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. If Respondent is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise Tax system, Respondent must do so prior to contracting with the State of Texas.

**B.7.8.3 Certification Concerning Dealings with Public Servants**

Respondent, by submitting its Proposal, certifies that it has not given and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this transaction.

**B.7.8.4 Certification Concerning Financial Participation**

Under Texas Government Code § 2155.004, Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

**B.7.8.5 Certification Concerning Hurricane Relief**

A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

Under Texas Government Code Section 2261.053 Respondent certifies that the individual or business entity named in this proposal or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Under Texas Government Code Section 2155.006 Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**B.7.8.6 Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code § 572.069**

Respondent certifies that it has not employed and will not employ a former [AGENCY] or state officer who participated in a procurement or contract negotiation for [AGENCY] involving Respondent within two years after the state officer or employee left state agency employment or service.

This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

#### **B.7.9 Independent Contractor**

Respondent is not an employee, officer, or agent of [AGENCY] for any purpose under this solicitation or Contract. Respondent is and remains an independent contractor in relationship to [AGENCY]. [AGENCY] is not responsible for withholding taxes from payments made under the Contract. Respondent may not claim vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind from [AGENCY].

#### **B.7.10 No Assignment by Contractor**

Respondent may not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the [AGENCY].

#### **B.7.11 Indemnification and Liability**

##### **Acts or Omissions**

**Contractor shall indemnify and hold harmless the State of Texas, [AGENCY], , AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE [AGENCY] AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

##### **Infringements**

**a) Contractor shall indemnify and hold harmless the State of Texas, [AGENCY], , AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE [AGENCY] AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE**

**TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**

**b) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to [AGENCY'S] specific instructions, (iv) any intellectual property right owned by or licensed to [AGENCY], or (v) any use of the product or service by [AGENCY] that is not in conformity with the terms of any applicable license agreement.**

**c) If Contractor becomes aware of an actual or potential claim, provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against [AGENCY], shall), at Contractor's sole option and expense; (i) procure for the [AGENCY] the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that [AGENCY'S] use is non-infringing.**

**Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

**1) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, [AGENCY] SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.**

**2) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, [AGENCY], AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE [AGENCY] AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

### **B.7.12 Respondent Liability for Damage to Government Property**

Respondent is liable for all damages to government-owned, leased, or occupied property and equipment caused by Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. Respondent must notify the [AGENCY] Contract Manager in writing of any such damage within one calendar day.

### **B.7.13 Force Majeure**

[AGENCY] and Respondent will not be responsible for delays in performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of [AGENCY], or Respondent.

In the event of an occurrence under this Section, the [AGENCY] or Respondent (parties) will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The party will immediately notify the other party by telephone (to be confirmed in writing within five calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

### **B.7.14 Buy Texas**

In accordance with Texas Government Code § 2155.4441, Respondent must, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

### **B.7.15 Miscellaneous Terms and Conditions**

#### **B.7.15.1 Permits**

Respondent will be responsible, at the Respondent's expense, for obtaining all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.

#### **B.7.15.2 Electrical Items**

All electrical items provided by Respondent to [AGENCY] under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA, or other applicable regulating body.

#### **B.7.15.3 Executive Head**

Pursuant to Texas Government Code § 669.003, the [AGENCY] may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Proposal, Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.

**B.7.15.4      Terminated Contracts**

By submitting a Proposal, Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, Respondent must identify each and provide an explanation for the termination.

**B.7.16 Non-Waiver of Rights**

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract operates to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

**B.7.17 No Waiver**

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the [AGENCY] or the State of Texas of any immunities from suit or from liability that the [AGENCY] or the State of Texas may have by operation of law.

Nothing in this Contract should be construed as a waiver of the sovereign immunity of the State of Texas, [AGENCY]. This Contract does not constitute or should not be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, [AGENCY]. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas, [AGENCY], under this Contract or under applicable law does not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. [AGENCY] does not waive any privileges, rights, defenses, or immunities available to [AGENCY] by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

**B.7.18 Severability**

If any provision of the Contract is for any reason held to be unenforceable, the rest of it remains fully enforceable.

**B.7.19 Applicable Law and Venue**

Respondent agrees that the Contract in all respects will be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the [AGENCY] under this Contract is, and that any such legal action or suit will be brought, in a court of competent jurisdiction in Travis County, Texas.

**B.7.20 Compliance with Laws; Dealing with Public Servants**

The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code § 36.02, which prohibits bribery; (ii) Texas Penal Code § 36.09, which

prohibits the offering or conferring of benefits to public servants; (iii) Texas Government Code § 2155.003, which prohibits the chief clerk or any other employee of the [AGENCY] from having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

Respondent must give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, [AGENCY] is not responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent bears all claims, costs, losses and damages caused by, arising out of or resulting.

#### **B.7.21 Insurance and Other Security**

Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required specifically by Part A of this RFP and generally to ensure proper fulfillment of the Contract and its liabilities thereunder. Respondent will insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance must comply with Texas statutory requirements and also cover any cargo being delivered to [AGENCY].

#### **B.7.22 Deceptive Trade Practices; Unfair Business Practices**

Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Texas Business and Commerce Code Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit. Respondent represents and warrants that it has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

#### **B.7.23 Immigration**

The Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

#### **B.7.24 Key Personnel Change Management**

Respondent agrees that the key personnel assigned to the Contract will remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by Respondent or unless [AGENCY] agrees to a change in the key personnel.

#### **B.7.25 Federal, State, and Local Laws, Regulations, and Requirements**

B.7.25.1 Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and



guidelines currently exist and as they are amended throughout the term of this Contract. [AGENCY] reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for [AGENCY] or Contractor's compliance with all applicable federal, state, and local laws and regulations.

Contractor will indemnify the State of Texas and will pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

#### **B.7.26 Taxes**

##### **B.7.26.1 State and Federal Tax Law.**

Respondent must comply with all federal and state tax laws and withholding requirements.

##### **B.7.26.2 Federal Tax Reform Act.**

Contractor must demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees.

#### **B.7.27 Worker's Compensation**

Respondent is responsible for both federal and state unemployment insurance coverage and standard Worker's Compensation insurance coverage. The State of Texas is not liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage or any federal or state withholding requirements.

#### **B.7.28 No Liability Upon Termination**

If this Contract is terminated for any reason, the State of Texas and [AGENCY] are not liable to Respondent for any damages, claims, losses, or any other amounts arising from or related to termination. However, Respondent may be entitled to the remedies provided in Texas Government Code Chapter 2260.

#### **B.7.29 Felony Criminal Convictions**

Respondent represents and warrants that Respondent has not and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised [AGENCY] as to the facts and circumstances surrounding the conviction. If awarded the contract, Respondent has a continuing duty to amend, supplement, or correct this representation and warranty not later than ten days after discovering additional information relating to felony criminal convictions of Respondent or any of its employees. Respondent will not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from [AGENCY].

#### **B.7.30 Drug-Free Workplace**

Respondent must comply with the applicable provisions of the Drug-Free Work Place Act of 1988.

### **B.7.31 Vendor Performance Before and After Award**

In accordance with Texas Government Code §§ 2155.074 and 2262.055, vendor performance may be used as a disqualification factor in the award of any contract resulting from this solicitation.

[AGENCY] may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (VPTS) as authorized by 34 Texas Administrative Code § 20.108, [AGENCY] may examine other sources of Respondent performance including notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. These sources of Respondent performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the federal government. Further, [AGENCY] may initiate these examinations of Respondent's performance based upon media reports. Any investigations are at [AGENCY]'s sole discretion, and any negative findings, as determined by [AGENCY], may result in a non-award to Respondent. Information pertaining to VPTS is located on CPA's website at: [http://www.window.texas.gov/procurement/prog/vendor\\_performance/](http://www.window.texas.gov/procurement/prog/vendor_performance/).

Additionally, per Texas Government Code § 2155.089, [AGENCY] will review successful Respondent's performance under a contract resulting from this solicitation after the contract is completed or otherwise terminated. These reviews and any resulting classification grades will be posted on the Vendor Performance Tracking System as noted in Texas Government Code § 2262.055.

### **B.7.32 State of Texas Debarment**

In the event that Respondent has repeated unfavorable VPTS performance reviews, repeated unfavorable VPTS grading classifications, or has more than two contract terminations within the preceding three years for unsatisfactory performance, the Texas Comptroller of Public Accounts may bar a vendor from participating in state contracts for a period commensurate with the seriousness of Respondent's action and the damage to the state's interests.

### **B.7.33 Electronic and Information Resources Accessibility Standards, As Required by 1 Texas Administrative Code Chapter 213 (Applicable to State Agency and Institutions of Higher Education Purchases Only)**

(1) Effective September 1, 2006, state agencies and institutions of higher education must procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Admin. Code Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(2) Respondent must provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Respondents not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.